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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Identify Disadvantaged Communities in the San Joaquin Valley and Analyze Economically Feasible Options to Increase Access to Affordable Energy in those Disadvantaged Communities.	Rulemaking 15-03-010 (Filed March 26, 2015)
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ADMINISTRATIVE LAW JUDGE'S RULING ON LEADERSHIP COUNSEL FOR JUSTICE AND ACCOUNTABILITY'S AMENDED NOTICE OF INTENT TO CLAIM INTERVENOR COMPENSATION

Party intending to claim intervenor compensation: Leadership Counsel for Justice and Accountability	
Assigned Commissioner: Liane Randolph	Administrative Law Judges: S. Pat Tsen

PART I: PROCEDURAL ISSUES
(Completed by the Party intending to claim intervenor compensation)

A. Status as "customer" (see Pub. Util. Code § 1802(b)):¹ The party claims "customer" status because the party is (check one):	Applies (check)
1. A Category 1 customer is an actual customer whose self-interest in the proceeding arises primarily from his/her role as a customer of the utility and, at the same time, the customer must represent the broader interests of at least some other customers. In addition to describing your own interest in the proceeding you must show how your participation goes beyond just your own self-interest and will benefit other customers.	<input type="checkbox"/>
2. A Category 2 customer is a representative who has been authorized by actual customers to represent them. Category 2 involves a more formal arrangement where a customer or a group of customers selects a more skilled person to represent the customer's views in a proceeding. A customer or group of customers may also form or authorize a group to represent them, and the group, in turn, may authorize a representative such as an attorney to represent the group. A representative authorized by a customer must identify the residential customer(s) being represented and provide authorization from at least one customer. See D.98-04-059 at 30.	<input type="checkbox"/>
3. A Category 3 customer is a formally organized group authorized, by its articles of incorporation or bylaws to represent the interests of residential customers or	

¹ All statutory references are to California Public Utilities Code unless indicated otherwise.

<p>small commercial customers receiving bundled electric service from an electrical corporation.² Certain environmental groups that represent residential customers with concerns for the environment may also qualify as Category 3 customers, even if the above requirement is not specifically met in the articles or bylaws. <i>See D.98-04-059, footnote at 3.</i></p>	<input checked="" type="checkbox"/>
<p>The party's explanation of its customer status must include the percentage of the intervenors members who are residential ratepayers or the percentage of the intervenors members who are customers receiving bundled electric service from an electrical corporation, and must include supporting documentation: (i.e., articles of incorporation or bylaws).</p> <p>Leadership Counsel is a Category 3 customer or "organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers" (articles attached). It is a nonprofit organization that partners with, and/or legally represents, community-based organizations (CBOs) in disadvantaged communities in pursuit of environmental justice and equitable community development. Its mission is to mobilize community voice, advocate for sound policy, and eradicate injustice to promote equal access to opportunity regardless of wealth, race, income, and place.</p> <p>Leadership Counsel is not a membership organization; however, the members of its partner-CBOs are exclusively residential ratepayers in low-income communities. Approximately 90 percent of its clients and partners reside in the San Joaquin Valley, while the remaining reside in the East Coachella Valley.</p> <p>Leadership Counsel provides legal representation to the following CBOs: Familias Addams por un Mejor Futuro (Fresno County), Concerned Citizens of West Fresno (Fresno County), Matheny Tract Committee (Tulare County), Tooleville Mutual Nonprofit Water Association (Tulare County), and the Committee of Sunbird Residents (Riverside County). Leadership Counsel's nonclient partners include the following CBOs: Lideres Campesinas (Merced County, Madera County, Riverside County), Fairmead Community and Friends (Madera County), Community United in Lanare (Tulare County), Lamont Parent Partners (Kern County), Committee for a Better Arvin (Kern County), and Greenfield Walking Group (Kern County).</p> <p>Leadership Counsel does not have a charter or bylaws that explicitly meet the requirement given above. However, it does satisfy the implicit authorization described in D.98-04-059, footnote at 30: "With respect to environmental groups, we have concluded they were eligible in the past with the understanding that they represent customers whose environmental interests include the concern that, e.g., regulatory policies encourage the adoption of all cost-effective conservation measures and discourage unnecessary new generating resources that are expensive and</p>	

² Intervenors representing either a group of residential customers or small commercial customers who receive bundled electric service from an electrical corporation, must indicate in Part I, Section A, Item #4 of this form, the percentage of their members who are residential customers or the percentage of their members who receive bundled electric service from an electrical corporation. The NOI may be rejected if this information is omitted.

<p>environmentally damaging... They represent customers who have a concern for the environment which distinguishes their interests from the interests represented by Commission staff, for example.”</p> <p>Leadership Counsel represents customers and potential customers whose interests include the concerns that policies or programs do not disproportionately and negatively impact low-income communities; that such communities receive just and equitable benefits from new regulations, policies, or programs; and that the program at issue in this proceeding improves environmental quality. Thus, their interests differ not only from those of Commission staff, but also from the interests of other conservation-focused environmental groups and consumer advocates that have intervened in this proceeding. Leadership Counsel works closely with several communities that are the subject of these proceedings and, accordingly, are in a strong position to represent the interests of these most impacted residents.</p>	
<p>Do you have any direct economic interest in outcomes of the proceeding?³ Yes: <input type="checkbox"/> No: <input checked="" type="checkbox"/> If “Yes”, explain:</p>	
B. Conflict of Interest (§ 1802.3)	Check
1. Is the Party a representative of a group representing the interests of small commercial customers who receive bundled electric service from an electrical corporation?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2. If the answer to the above question is “Yes”, does the Party have a conflict arising from prior representation before the Commission?	<input type="checkbox"/> Yes <input type="checkbox"/> No
C. Timely Filing of Notice of Intent (NOI) (§ 1804(a)(1)):	Check
1. Is the Party’s NOI filed within 30 days after a Prehearing Conference? Date of Prehearing Conference: 2/24/2015	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2. Is the Party’s NOI filed at another time (for example, because no Prehearing Conference was held, the proceeding will take less than 30 days, the schedule did not reasonably allow parties to identify issues within the timeframe normally permitted, or new issues have emerged)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2a. The Party’s description of the reasons for filing its NOI at this other time:	
2b. The Party’s information on the proceeding number, date, and decision number for any Commission decision, Commissioner ruling, Administrative Law Judge’s ruling, or other document authorizing the filing of NOI at that other time:	

PART II: SCOPE OF ANTICIPATED PARTICIPATION
(Completed by the Party intending to claim intervenor compensation)

A. Planned Participation (§ 1804(a)(2)(A)(i)):
<p>The party’s statement of the issues on which it plans to participate:</p> <p>Leadership Counsel currently plans to participate in the further identification of eligible,</p>

³ See Rule 17.1(e).

disadvantaged communities; and in the identification of options to increase affordable access to energy for such communities.

The party's explanation of how it plans to avoid duplication of effort with other parties: Leadership Counsel currently plans to participate in the further identification of eligible, disadvantaged communities; and in the identification of options to increase affordable access to energy for such communities.

The party's explanation of how it plans to avoid duplication of effort with other parties: Leadership Counsel, to the extent possible, will coordinate with other parties to avoid duplication and, where appropriate, will utilize joint comments and resolve issues ahead of formal hearings or submissions. Leadership Counsel is the only potential intervenor focused on representing lower income communities in the San Joaquin Valley; it will work with other interested parties based in the San Joaquin Valley to ensure representation of those interests throughout this proceeding.

The party's description of the nature and extent of the party's planned participation in this proceeding (to the extent that it is possible to describe on the date this NOI is filed):

Leadership Counsel intends to submit comments, briefs, and other legal pleadings, and to participate in hearings, workshops, and meetings.

B. The Party's itemized estimate of the compensation that the party expects to request, based on the anticipated duration of the proceeding (§ 1804(a)(2)(A)(ii)):

Item	Hours	Rate \$	Total \$	#
ATTORNEY, EXPERT, AND ADVOCATE FEES				
Phoebe Seaton	10	320	3,200	
Robert Fuentes	80	170	13,600	
Subtotal: \$16,800				
COSTS				
Copying, postage, office supplies			40	
Travel			800	
LexisNexis Research			200	
Subtotal: \$1,040				
TOTAL ESTIMATE: \$17,840				

Estimated Budget by Issues:

Leadership Counsel preliminarily estimates that its participation will be allocated as follows:

- Identification of disadvantaged communities (DACs): 20%
- Identification of options to increase affordable access to energy: 30%
- Evaluation of options' environmental, health, and economic effects on DACs: 50%

PART III: SHOWING OF SIGNIFICANT FINANCIAL HARDSHIP
(Completed by Party intending to claim intervenor compensation)

A. The Party claims "significant financial hardship" for its Intervenor Compensation Claim in this proceeding on the following basis:	Applies (check)
1. "[T]he customer cannot afford, without undue hardship, to pay the costs of effective participation, including advocate's fees, expert witness fees, and other reasonable costs of participation" (§ 1802(g)); or	<input type="checkbox"/>

2. “[I]n the case of a group or organization, the economic interest of the Individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding” (§ 1802(g)).	<input checked="" type="checkbox"/>
3. A § 1802(g) finding of significant financial hardship in another proceeding, made within one year prior to the commencement of this proceeding, created a rebuttable presumption in this proceeding (§ 1804(b)(1)).	<input checked="" type="checkbox"/>
Commission’s finding of significant financial hardship made in proceeding number:	
Date of Administrative Law Judge’s Ruling (or CPUC Decision) in which the finding of significant financial hardship was made:	
B. The Party’s explanation of the factual basis for its claim of “significant financial hardship” (§ 1802(g)) (necessary documentation, if warranted, is attached to the NOI):	
<p>Leadership Counsel is a small nonprofit that works with, and/or legally represents, community-based organizations (CBOs) in disadvantaged communities throughout the San Joaquin and East Coachella valleys (see Part I(A) above). Although Leadership Counsel is not a member organization, the members of its partner-CBOs are exclusively residential ratepayers in low-income communities. Thus, the cost of Leadership Counsel’s effective participation in this proceeding substantially outweighs the anticipated financial benefit to any individual person it represents. See Pub. Util. Code § 1802(g).</p> <p>Leadership Counsel is a project of the Tides Center and is a not-for-profit organization. The Tides Center is the fiscal agent of Leadership Counsel, which operates under Tides’ 501(c)(3) status. As such, Leadership Counsel is not separate legal entity. At the same time, Leadership Counsel’s activities are funded solely by charitable donations and grants (most recent financial statements attached). Although the Tides Center assists with financial management, it does not provide funding to its projects; Leadership Counsel solely is responsible for its fundraising. Currently, Leadership Counsel does not have any support for its engagement in this proceeding.</p>	

ADMINISTRATIVE LAW JUDGE RULING

	<input checked="" type="checkbox"/>
<p>1. The Notice of Intent (NOI) has demonstrated the party’s status as a “customer” for the following reasons:</p> <p>Leadership Counsel for Justice and Accountability’s (Leadership Counsel) Articles of Incorporation and Bylaws authorize it to</p> <p style="padding-left: 40px;">... mobilize community voice, advocate for sound policy, and eradicate injustice to promote equal access to opportunity regardless of race, income and place.</p> <p>A ruling of March 16, 2016 on the Leadership Counsel’s original Notice of Intent to Claim</p>	<input checked="" type="checkbox"/>

<p>Intervenor Compensation (NOI) (filed December 16, 2015) found that the stated purposes were too broad to sufficiently support the organization's customer status. The Ruling allowed the group to provide additional information. The amended NOI was filed on March 25, 2016. Responding to the ruling, the NOI provides complete copies of the Leadership Counsel's Articles of Incorporation and Bylaws, additional facts regarding Leadership Counsel's customer status, and financial information. I find that although the language in the bylaws is overly broad, the relevant facts taken in their entirety help to narrow down the broad statements in the bylaws to mean that this organization represents low-income and underrepresented community members.</p> <p>Leadership Counsel is a nonprofit organization that legally represents and partners with, community-based non-profit organizations of low-income residents and underrepresented communities in the areas subject to this proceeding. These organizations' members are exclusively residential ratepayers. Approximately 90% of Leadership Counsel's clients and partners reside in the San Joaquin Valley and the remaining – in the East Coachella Valley. I find that Leadership Counsel's legal representation activities align it with a public interest law firm that we found eligible in D.88-05-028.⁴ Leadership Counsel has demonstrated it is a §1802(b)(1)(C) customer.</p>	
<p>2. The NOI has demonstrated significant financial hardship for the reasons set forth in Part III of the NOI (above), subject to further showing in a claim filed pursuant to § 1804(c).</p> <p>D.88-05-028 determined that the definition of a public interest law firm found in Revenue Ruling 75-74 is keyed to representation of clients whose representation by private law firms is economically infeasible, and that only a mandated preclusion from charging fees clearly establishes that public interest firms are providing representation not available from traditional private sources.⁵ The Commission concluded that Public Advocates did not collect fees from its clients⁶ and, for the purposes of that proceeding, qualified as</p>	<input checked="" type="checkbox"/>

⁴ D1988 Cal. PUC LEXIS 460, *; 28 CPUC2d 172.

⁵ D.88-05-028, 1988 Cal. PUC LEXIS 460, *3; 28 CPUC2d 172. D.88-05-028 refers to the prior decision (D.86-11-079) on point.

⁶ D.88-05-028 referred to the *Revenue Ruling 75-76* clarification that the acceptance of the intervenor compensation is not necessarily inconsistent with the basis of the IRC charitable exemption of public interest law firms.

“customer.” I determine that Leadership Counsel made a preliminary showing of significant financial hardship. To complete this showing, I direct Leadership Counsel to include in a claim filed pursuant to §1804(c) a statement on whether this intervenor derives any income from attorney fees.	
3. The Administrative Law Judge provides the following additional guidance (see § 1804(b)(2)): To complete its preliminary showing of significant financial hardship, I direct Leadership Counsel to include in a §1804(c) compensation claim a statement on whether the intervenor derives any income from attorney fees.	<input checked="" type="checkbox"/>

IT IS RULED that:

1. Leadership Counsel for Justice and Accountability has satisfied the eligibility requirements of Pub. Util. Code § 1804(a).	<input checked="" type="checkbox"/>
2. Leadership Counsel for Justice and Accountability has made a preliminary showing of significant financial hardship, subject to the additional guidance set forth.	<input checked="" type="checkbox"/>
3. Leadership Counsel for Justice and Accountability is preliminarily determined to be eligible for intervenor compensation in this proceeding. However, a finding of significant financial hardship in no way ensures compensation.	<input checked="" type="checkbox"/>
4. Additional guidance is provided to the customer as set forth above.	<input checked="" type="checkbox"/>

Dated October 18, 2016, at San Francisco, California.

 /s/ S. PAT TSEN
 S. Pat Tsen
 Administrative Law Judge